

D.T.E. 03-62-A

Inquiry by the Department of Telecommunications and Energy, on its own motion, pursuant to G.L. c. 164, § 1F, to investigate the use of the New England Generation Information System for the purposes of complying with the Information Disclosure Requirements contained in 220 C.M.R. § 11.06 et seq.

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## I. INTRODUCTION

\_\_\_\_\_ On June 13, 2003, the Department of Telecommunications and Energy (“Department”) issued an Order opening an inquiry, pursuant to G.L. c. 164, § 1F, into the use of the New England Generation Information System (“NE-GIS”) for the purposes of complying with the Department’s Information Disclosure Requirements contained in 220 C.M.R. § 11.06 et seq. New England Generation Information System, D.T.E. 03-62 (2003).<sup>1</sup> These regulations require that each competitive supplier provide its customers an information disclosure label containing the price, fuel source, emissions, and labor characteristics of the supplier’s generation resource portfolio. 220 C.M.R. § 11.06(2).<sup>2</sup> Competitive suppliers are required to update the information presented on their disclosure labels on a quarterly basis, using market settlement data or equivalent data provided by the Independent System Operator - New England (“ISO-NE”) for the most recent one-year period. 220 C.M.R. § 11.06(2)(d)(1).

The Department identified three benefits associated with requiring the use of NE-GIS data as the basis for compliance with our information disclosure requirements. D.T.E. 03-62,

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<sup>1</sup> G.L. c. 164, § 1F(5) and (6) directs the Department to promulgate rules and regulations “prescribing the form, content, and distribution” of pertinent information that competitive suppliers must provide to consumers. The Department’s rules and regulations on this issue are contained in 220 C.M.R. § 11.06.

<sup>2</sup> The regulations state “[e]ach Competitive Supplier and each Distribution Company providing Standard Offer Generation Service or Default Service shall prepare information on a label, or labels, for Retail Customers in a consistent format, as determined by the Department.” 220 C.M.R. § 11.06(2)(a). For the purpose of this Order, reference to competitive suppliers’ information disclosure requirements shall be understood to apply equally to distribution companies providing standard offer and default service.

at 4. First, NE-GIS provides suppliers with an efficient means of demonstrating compliance with various state regulatory requirements throughout New England.<sup>3</sup> Id. Second, it furthers the Department's objective of ensuring that customers are presented with consistent information by which to evaluate services offered by competitive suppliers and distribution companies (see 220 C.M.R. § 11.06(1)). Id. Finally, it should simplify the Department's review of suppliers' information disclosure annual reports required by 220 C.M.R.

§ 11.06(2)(d)(3). Id. The Department requested comments from interested persons on three issues: (1) whether we should require that all competitive suppliers use data produced by NE-GIS as the sole basis for the fuel source, emissions, and labor information included on the disclosure labels; (2) the manner in which suppliers should transition to the use of NE-GIS data on their disclosure labels; and (3) information that should be included in suppliers' information disclosure annual reports. On July 2, 2003, the Department held a technical session to provide interested persons an opportunity to discuss these issues, and other NE-GIS related issues, prior to the filing of written comments.

On July 9, 2003, written comments were filed by Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company (together, "NSTAR"); Cape Wind Associates ("Cape Wind"); Community Energy, Inc. ("CEI"); Conservation Services Group ("CSG"); Constellation NewEnergy ("Constellation"); Dominion Retail, Inc.

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<sup>3</sup> In an October 10, 2001 letter to the New England Power Pool, the Department joined public utility commissions from the other New England states in expressing support for NE-GIS (October 10, 2001 Letter from New England Conference of Public Utility Commissioners, Inc.).

(“Dominion”); the Massachusetts Department of Environmental Protection (“DEP”); the Massachusetts Division of Energy Resources (“DOER”); Massachusetts Electric Company and Nantucket Electric Company (together, “MECo”); the Massachusetts Energy Consumers Alliance, the Clean Water Fund and the Massachusetts Public Interest Research Group (jointly, “Mass Energy”); Select Energy (“Select”); TransCanada Power Marketing (“TransCanada”); and Western Massachusetts Electric Company (“WMECo”).<sup>4</sup>

In this Order, the Department addresses: (1) whether NE-GIS data should serve as the sole basis for the fuel source, emissions, and labor information included on suppliers’ information disclosure labels (Section II); (2) the date on which suppliers should begin using NE-GIS data on their disclosure labels (Section III); (3) the manner in which suppliers should use NE-GIS data on their disclosure labels during the initial twelve-month transition period (Section III); (4) the manner in which the Department will verify information used on suppliers’ disclosure labels and included in their annual reports (Section IV); and (5) other issues raised by commenters (Section V).

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<sup>4</sup> Some of the written comments included recommendations for revisions the Department could make to our information disclosure requirements, in anticipation of a rulemaking the Department would open to revise our regulations on these issues. However, in this order, the Department addresses only those issues identified in D.T.E. 03-62, and certain other issues identified by commenters that are directly related to the use of NE-GIS data on suppliers’ disclosure labels.

## II. NE-GIS DATA AS SOLE BASIS FOR INFORMATION DISCLOSURE LABELS

### A. Introduction

NE-GIS is a certificate-based system that allows retail suppliers in New England to purchase a generator's electricity environmental attributes separately from the generator's electricity commodity. NE-GIS creates an "attribute" certificate for every megawatt produced by generating units that are included in the market settlement system used by ISO-NE. New England Power Pool Generation Information System Operating Rules ("NE-GIS Rules"), at Rule 2.1(a).<sup>5</sup> The certificates issued to a generator list all of the generator's non-price attributes required for reporting by the various New England states. Id. at Rule 3.1. For each calendar quarter, NE-GIS establishes a two-month trading period during which suppliers serving retail load in New England can purchase the attribute certificates issued to generators during the quarter. Id. Soon after the close of the trading period, NE-GIS creates a report for each supplier that summarizes the attribute information included on the certificates purchased by, or assigned to,<sup>6</sup> the supplier during that quarter. Id. at Rule 5.2(a). The Department proposed that the attribute information contained in suppliers' quarterly NE-GIS serve as the

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<sup>5</sup> NE-GIS will also create attribute certificates for generators that are not included in the ISO-NE market settlement system, pursuant to provisions included in NE-GIS Rule 2.1(a).

<sup>6</sup> If the number of certificates purchased by a supplier is less than the supplier's retail sales for the quarter, NE-GIS assigns "residual" certificates to the supplier. The attributes listed on "residual" certificates for a particular quarter are calculated as the average of the attributes of those certificates that have not been purchased during the quarter. NE-GIS Rule 4.4.

sole basis for the fuel source, emissions, and labor information included on their disclosure labels. D.T.E. 03-62, at 4.

B. Summary of Comments

CSG, Constellation, DEP, DOER, MECo, and WMECo support the use of NE-GIS data as the basis for the fuel source, emissions, and labor information that each supplier includes on its disclosure label (CSG Comments at 2; Constellation at 1; DEP Comments at 2; DOER Comments at 2-3; MECo Comments at 1; WMECo Comments at 1). However, CSG, DEP, and DOER identify two areas in which NE-GIS should not be used as the sole source for the disclosure labels (CSG Comments at 2; DEP Comments at 2; DOER Comments at 2-3). First, these commenters state that NE-GIS does not produce the regional emissions data to which supplier-specific data is compared on the labels. These commenters maintain that, until NE-GIS produces such data, the Department must rely on other sources, as is currently the case (CSG Comments at 2; DEP Comments at 2; DOER Comments at 2-3). DEP states that the Department should clarify that, although non-NE-GIS sources will be used to determine the regional data, NE-GIS data shall serve as the sole basis for the supplier-specific information that appears on the disclosure labels (DEP Comments at 2). DEP argues that allowing for multiple sources of data for such supplier-specific information could result in a “single environmental attribute being used by two different suppliers” (*id.*). Second, CSG and DOER state that NE-GIS is not able to verify the accuracy of the manner in which suppliers disaggregate their regional sales, as reported by ISO-NE, into state-specific sales, and within states, to product-specific sales, where appropriate (CSG Comments at 2; DOER Comments

at 3). These commenters maintain that information provided by a source other than NE-GIS is necessary to independently verify sales data for such state-specific and disaggregated products (CSG Comments at 2; DOER Comments at 3).

Cape Wind, NSTAR, Select, and TransCanada oppose the Department's proposal that NE-GIS data serve as the sole source of information for suppliers' disclosure labels (Cape Wind at 1; NSTAR Comments at 2; Select Comments at 2-3; TransCanada Comments at 2). TransCanada states that its opposition is based on the fact that a certain group of generators, those greater than five megawatts that are not included in the ISO-NE market settlement system, are excluded from participating in NE-GIS (TransCanada Comments at 2-3). TransCanada argues that, until the NE-GIS rules are revised so as to allow these generators to participate, the Department should allow a supplier to use the attributes of a non-NE-GIS generator on its labels, provided the supplier can sufficiently document that it has a contractual arrangement to purchase energy from such generator (id.). TransCanada notes that DOER permits suppliers to use the attributes of generators that do not participate in NE-GIS for the purposes of RPS compliance (id.).

Cape Wind states that it opposes the use of NE-GIS data as the sole source of information required for disclosure purposes because the rules that govern the implementation of NE-GIS rules are subject to change by New England Power Pool ("NEPOOL") members, who, in the future, may alter the rules in a manner that is not consistent with the Department's policies (Cape Wind Comments at 1). Cape Wind states that it is primarily concerned with the NE-GIS rules that govern the treatment of renewable resources located outside of New



England, and recommends that the Department clearly identify the manner in which NE-GIS should treat the attributes of such resources (id.).

Finally, NSTAR opposes sole NE-GIS use because such a requirement would preclude NSTAR from using the attribute data associated with the various wholesale suppliers that, through power-purchase agreements, provide NSTAR with a significant amount of its standard offer and default service supply (NSTAR Comments at 2). NSTAR states that requiring it to use NE-GIS data as the sole basis for its information disclosure labels may limit its sources for the labels (id.).

### C. Analysis and Findings

The information included on the disclosure labels may be divided into two categories: (1) information that is specific to each competitive supplier, which includes the fuel source composition of each supplier's resource portfolio, and the air emissions rates and labor characteristics associated with the supplier's portfolio; and (2) information that is uniform for all suppliers, which includes regional average air emission rates and the air emissions rates of a new generating unit to which the supplier's emission rate are compared. See 220 C.M.R. § 11.06(2). In proposing that NE-GIS data be the sole basis for the fuel source, emissions, and labor characteristics included on suppliers' disclosure labels, the Department intended that this requirement apply only to the supplier-specific category of information. The Department recognizes that the regional and new unit air emission rates that are included on labels originate from DEP and ISO-NE, respectively – they are not produced by NE-GIS.

Thus, until NE-GIS produces data on regional and new unit air emission rates, suppliers shall continue to use the current sources for this information.

The Department also recognizes that the retail sales information that ISO-NE provides to NE-GIS is based on suppliers' activities within the entire New England region, and that NE-GIS cannot verify the manner in which a supplier divides its regionwide sales among the various New England states. The Department considers this to be a data verification issue rather than a data source issue, and, therefore, addresses the issue in Section IV, below.

The purpose of the Department's information disclosure requirements is to ensure that consumers are presented with consistent information by which to evaluate services offered by competitive suppliers. A Department directive requiring suppliers to use NE-GIS data as the sole source of data for the supplier-specific information included on their disclosure labels will ensure that all suppliers will develop their labels in a uniform manner, using the same source for the data include therein. This, in turn, will ensure that differences in the attributes shown on suppliers' labels represent real differences in the suppliers' product offerings, and not simply differences in the manner in which the suppliers developed the information included on their labels, or the source of that information. Allowing suppliers to develop hybrid disclosure labels, in which the supplier-specific information included on the labels is based on both NE-GIS and non-NE-GIS sources, would create uncertainties in the validity of the information, thus reducing the usefulness of the labels to consumers in evaluating competitive offerings. In addition, allowing for the use of hybrid labels would require significant verification efforts by the Department to ensure that the attributes of a specific generator are not double counted,

once through the generator's NE-GIS certificates and again through some non-NE-GIS means. The negatives associated with allowing for a hybrid approach far outweigh any benefits that may arise from providing suppliers with some flexibility in developing their labels.

It is, of course, essential that NE-GIS be implemented in such a way that the information it produces is accurate to the greatest extent possible. The NE-GIS Rules were initially developed and approved by members of NEPOOL; similarly, all revisions to the NE-GIS Rules are to be developed and approved by NEPOOL members. NE-GIS Rule 1.3. The Department and other New England regulators worked with NEPOOL members in the initial development of the NE-GIS Rules, and continues to work with NEPOOL members to identify appropriate revisions to the rules. Comments received in this proceeding identify deficiencies (or potential deficiencies) in the NE-GIS Rules that may impact the accuracy of its data, and thus, the accuracy of suppliers' information disclosure labels. As addressed in Sections V.D and VI, below, the Department intends to work with interested persons in this proceeding to identify those rule revisions that would improve the accuracy of NE-GIS data.

Based on our review of the comments received in this proceeding, the Department directs all suppliers to use the information included on their NE-GIS reports as the sole basis for the supplier-specific attribute information included on their labels, consistent with the guidelines established in Section III, below.<sup>7</sup>

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<sup>7</sup> As stated above, suppliers shall continue to use non-NE-GIS data for the regional and new unit air emission rates that appear on their labels.

### III. TRANSITION TO USE OF NE-GIS DATA

#### A. Introduction

In D.T.E.03-62, at 4-5, the Department presented two proposals regarding the manner in which suppliers should transition to the use of NE-GIS data on their information disclosure labels. The first Department proposal addressed the issue of when suppliers should begin using NE-GIS data on their labels. As described above, NE-GIS creates a quarterly report for each supplier that summarizes the attribute information included on the certificates purchased by, or assigned to, the supplier during the applicable NE-GIS trading period. NE-GIS makes the reports available soon after the close of the trading period. The Department proposed that the initial report for which data would be on suppliers' disclosure labels be the earliest report for which the trading period has not yet begun. Id. Based on the date of issuance of this Order, our proposal would result in the NE-GIS report for the fourth quarter of 2003, for which the trading period begins April 15, 2004,<sup>8</sup> being the initial report to be used by suppliers. The Department requested comments on whether such a schedule would provide suppliers with sufficient lead to transition to the use of NE-GIS data. Id.

The second Department proposal addressed the issue of whether data from both NE-GIS and non-NE-GIS sources should be included on disclosure labels during the twelve-month period that follows the initial use of NE-GIS. After this initial twelve-month

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<sup>8</sup> The NE-GIS trading period for a quarter begins on the 15<sup>th</sup> day of the fourth month following the end of the quarter. The time lag between the end of a quarter and the beginning of the quarter's trading period is necessary to ensure the accuracy of the market settlement data provided by ISO-NE and the emissions data associated with each generator.

period, the Department proposed that each supplier's label include information from its four most recent NE-GIS quarterly reports, consistent with the Department's requirement that labels be based on information from the most recent twelve-month period (see 220 C.M.R. § 11.06 (2)(d)). Id. at 5. However, the initial labels updated pursuant to the Department proposal in this investigation would be based on less than twelve-months of data, if only NE-GIS data were to be used. The Department proposed that we grant suppliers an exception, pursuant to 220 C.M.R. § 11.08, to allow for the use of less than twelve months of NE-GIS data during this initial period. The Department requested comments on whether a short-term exception from our regulations would be appropriate for purposes of a smooth and timely transition to the use of NE-GIS data.

B. Summary of Comments

Constellation, DEP, MassEnergy, and Select state that the Department should move expeditiously in requiring that suppliers use NE-GIS data on disclosure labels, because of the benefits use of such data will provide to customers (Constellation Comments at 2; DEP Comments at 2; MassEnergy Comments at 2; Select Comments at 2). Constellation, DEP, and Select identify the second quarter of 2003 as the earliest quarter for which the Department should require that suppliers use NE-GIS, in order to allow suppliers sufficient time to transition to the new method of calculating their resource portfolios (Constellation Comments at 2; DEP Comments at 2; Select Comments at 2).

CSG, DEP, MECo, and WMECo support the Department's proposal regarding the use of less than twelve months of data on disclosure labels during the initial twelve months of

NE-GIS use (CSG Comments at 2-3; DEP Comments at 2; MECO Comments at 2; WMECo Comments at 1). CSG, DEP, and WMECo state that a label in which a supplier's fuel source, emissions and labor information is based on a mix of data from NE-GIS data and other sources may result in significant inaccuracies in the data included on the labels, and has the potential to cause substantial consumer confusion (CSG Comments at 3; DEP Comments at 2; WMECo Comments at 1). DEP states that the use of both NE-GIS and non-NE-GIS data on the labels could result in the double counting of a generator's attributes (DEP Comments at 2).

NSTAR and Select recommend that the Department allow suppliers the flexibility to use non-NE-GIS data until such time that twelve months of NE-GIS data is available (NSTAR Comments at 3; Select Comments at 3). Selects states that it currently bases its disclosure labels on NE-GIS data, but that flexibility to use non-NE-GIS data during the transition may be necessary for suppliers new to the Massachusetts market (Select Comments at 3). NSTAR maintains that allowing suppliers to use a combination of NE-GIS and non-NE-GIS data during the transition to the full use of NE-GIS would be consistent with current regulations because disclosure labels would reflect information over a twelve-month period (NSTAR Comments at 3).

### C. Analysis and Findings

The Department seeks to move expeditiously to the use of NE-GIS data on suppliers' information disclosure labels because such use will improve the ability of consumers to evaluate the services and products offered by competitive suppliers. At the same time, the Department recognizes the need to provide suppliers with sufficient lead time to transition to

the use of NE-GIS data. As stated above, the earliest quarter for which the NE-GIS trading period has not yet begun is the fourth quarter of 2003, for which the NE-GIS trading period begins April 15, 2004. In light of the fact that suppliers have been on notice of the Department's intention to require the use of NE-GIS data since June 2003, when D.T.E. 03-62 was issued, the Department concludes that suppliers have had sufficient time to plan for the use of NE-GIS data on their labels. Therefore, consistent with our proposal in D.T.E. 03-62, the Department establishes suppliers' NE-GIS reports for the fourth quarter of 2003 as the initial report for which NE-GIS data will be included on their labels. The NE-GIS report for this quarter is made available to suppliers on or around June 20, 2004. Therefore, the Department directs each supplier to update its information disclosure label during July 2004 to include information from its NE-GIS report for the fourth quarter of 2003.

In Section II, above, the Department stated that using NE-GIS data as the sole source of information for disclosure labels would increase the usefulness of the labels to consumers in evaluating competitive offerings because it will ensure that all suppliers develop their labels in a uniform manner, using the same source for the data included therein. The Department concludes that, beginning with labels issued during July 2004, which will be updated to include information for the fourth quarter of 2003, as discussed above, suppliers should include only NE-GIS data on their labels. As such, the labels updated in July 2004, October 2004 and January 2005 will be based on three, six, and nine months of NE-GIS data, respectively. To accommodate this during the initial twelve months of using NE-GIS data, the Department grants an exception, pursuant to 220 C.M.R. § 11.08, to our regulations that require that

suppliers use the most recent twelve months of information in developing their disclosure labels.

#### IV. ANNUAL REPORTS

##### A. Introduction

Our regulations require that each competitive supplier present an annual report to the Department that documents the non-price information included on its disclosure labels. 220 C.M.R. § 11.06(2)(d)(3). In D.T.E. 03-62, at 5-6, the Department proposed that each supplier include in its annual report the quarterly disclosure labels issued by the supplier during the calendar year, and the NE-GIS reports that are the basis for information included on those labels. The Department proposed that each supplier's report also include documentation that the information included on each of the labels is based (1) solely and accurately on the applicable NE-GIS reports, and (2) on the supplier's actual retail sales in Massachusetts during the applicable twelve-month period. Id. Finally, 220 C.M.R. § 11.06(2)(d)(3) requires that, for competitive suppliers that offer more than one product to their Massachusetts customers, the annual reports include a statement of verification by an independent auditor regarding the resource portfolio and retail sales associated with each of the supplier's products. The Department proposed that suppliers that offer multiple products to Massachusetts customers establish a separate NE-GIS sub-account for each of its products, in order to simplify the Department's review of the annual reports. Id. at 6.

As discussed in Section II, above, ISO-NE provides NE-GIS with information regarding each supplier's sales within the New England region. NE-GIS establishes an



account for each supplier that includes a certificates obligation for each quarterly trading period that is equal to the supplier's region-wide sales for the quarter. NE-GIS Rule 4.1. It is the responsibility of each supplier to establish a sub-account for each state in which it serves customers, and allocate its region-wide certificates obligation to its state-specific sub-accounts.<sup>9</sup>

Id. NE-GIS has no means to verify the accuracy with which a supplier allocates its region-wide sales into its state sub accounts. Similarly, NE-GIS cannot verify the accuracy with which a supplier allocates its state-wide sales into its product-specific sub accounts. Thus, to ensure the accuracy of the information included in suppliers' sub-accounts (in particular, the certificates obligation assigned to each sub-account), each supplier must provide independent verification in its annual report. The Department requested comments on ways in which competitive suppliers could efficiently satisfy the Department's verification requirements, as well as the verification requirements associated with DOER's Renewable Portfolio Standards ("RPS"). D.T.E. 03-62, at 6.

B. Summary of Comments

MECo and WMECo state that, as distribution companies, they are well-placed to provide the Department and DOER with information that can be used to verify the accuracy of the Massachusetts-specific sales that are shown on each supplier's quarterly NE-GIS reports (MECo Comments at 2-3; WMECo Comments at 2). This is because, in their role as the

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<sup>9</sup> Suppliers purchase NE-GIS certificates for each of their sub-accounts, with NE-GIS assigning, at the end of each trading period, the number of residual certificate to each sub-account necessary to ensure that the number of certificates in each sub-account is equal to that sub-account's certificates obligation.

”assigned meter readers” (as defined in NEPOOL market rules) for the ISO market system, distribution companies provide supplier-specific sales information to ISO-NE on an hourly basis (MECo Comments at 2-3). MECo and WMECo state that they could provide a report to the Department (and DOER) that summarizes each supplier’s retail sales in their respective service territories for each of NE-GIS’ quarterly trading periods (MECo Comments at 2-3; WMECo Comments at 2). DOER notes that it has been working with distribution companies and competitive suppliers, in the context of the Electronic Business Transactions (“EBTs”) Working Group,<sup>10</sup> to identify a low-cost method for verifying suppliers’ retail sales within the state (DOER Comments at 3-4).

CSG and Constellation state that they support the Department’s proposal to require suppliers that offer more than one product to customers in Massachusetts to establish a separate NE-GIS sub-account for each product (CSG Comments at 3-4; Constellation Comments at 2-3). CSG states that the use of sub-accounts in NE-GIS was established specifically to provide this “verification of compliance by attribute-differentiated products,” and that use of sub-accounts for this purpose will provide “maximum transparency and protect consumers” (CSG Comments at 3-4). CSG and Constellation recommend that, for the purpose of

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<sup>10</sup> The Electronic Business Transactions Working Group was formed during the Department’s investigation in Model Terms and Conditions, D.P.U./D.T.E. 97-65 (1997). The objective of the working group was to “develop standard transactions and formats for electronic transfer of customer information between distribution companies and competitive suppliers.” D.P.U./D.T.E. 97-65, at 4. The working group continues to meet “to ensure the prompt and efficient resolution of issues which are certain to rise” as these electronic transactions are used in the restructured industry. Id. at 5.

determining what types of products would require a separate sub-account, the Department adopt the definition of an “electricity product” included in DOER’s RPS regulations, 225 C.M.R. § 14.02.<sup>11</sup> CSG and Constellation state that having a single definition of an electricity product for compliance with information disclosure and RPS requirements would reduce the regulatory burden on suppliers, thus allowing suppliers to satisfy their regulatory reporting requirements more efficiently (CSG Comments at 3-4; Constellation Comments at 2-3). Finally, Select opposes the Department’s proposal to require an independent audit to verify the accuracy of sales associated with multiple products, stating that such a requirement would impose additional costs on suppliers that may discourage them from offering more than one product to consumers. Select states that an independent audit seems unnecessary in light of the fact that NE-GIS itself is administered by an independent entity (Select Comments at 6).

### C. Analysis and Findings

As an initial matter, the Department notes that no commenter opposed the Department’s proposal to require that competitive suppliers include in their annual reports (1) the quarterly information disclosure labels issued during the calendar year, and (2) the NE-GIS reports that are the basis for the information included on those labels. Therefore, the Department adopts these proposals. The Department clarifies that it is the NE-GIS reports for each supplier’s Massachusetts sub-accounts that suppliers will be required to include in their annual reports.

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<sup>11</sup> Department regulations define an electricity product as an electricity offering that is distinguished by non-price characteristics, including fuel type, emissions, vintage, and RPS eligibility. 225 C.M.R. § 14.02 .

In establishing requirements for verifying the accuracy of information included in suppliers' information disclosure annual reports, the Department must be mindful of the costs that such verification may impose on suppliers. As stated above, the purpose of the disclosure labels is to ensure that customers are presented with consistent information by which to evaluate competitive service offerings. It would be counterproductive if the costs associated with the Department's verification requirements served to limit those same offerings. In order to minimize costs associated with verifying product-specific sales, the Department seeks to develop a verification method that utilizes the EBTs that were developed pursuant to the Department's directives in Model Terms and Conditions, D.P.U./D.T.E. 97-65 (1997).

One of the primary functions of the EBTs is to allow suppliers to inform each distribution company of the customers to whom the supplier is providing retail generation service. As such, the EBTs allow each distribution company to track the customers in its service territory to whom each supplier provides retail service. In turn, distribution companies, in their roles as wholesale meter readers for the ISO-NE market system, report the load served by each supplier within their service territories to ISO-NE. By having the distribution companies provide this supplier-specific load information to the Department, we can efficiently verify the Massachusetts sales information that is included on suppliers' NE-GIS reports. Therefore, the Department will work with the distribution companies and other interested persons to establish the protocols by which the distribution companies will make this information available to the Department (see Section VI, below).

Although the EBTs allow distribution companies to track each supplier's overall sales in their respective service territories, the EBTs currently do not provide the information necessary to allow the distribution companies to track (or verify) a supplier's product-specific sales. There is not sufficient information in this proceeding to allow the Department to identify ways in which the EBTs could be revised to track a supplier's product-specific sales. Therefore, the Department will work with the distribution companies and other interested persons to address this issue, with the objective of ensuring that suppliers can efficiently satisfy both our and DOER's verification requirements (see Section VI, below) .

Finally, to ensure that suppliers can efficiently satisfy both the Department's and DOER's verification requirements with respect to product-specific sales within Massachusetts, the Department requires each supplier to establish a separate NE-GIS sub-account for each of its products that is distinguished by non-price characteristics, consistent with DOER's definition of an electricity product.

## V. OTHER ISSUES

### A. Fuel Source Categories

Department regulations identify twelve fuel sources to be listed on information disclosure labels. 220 C.M.R. 11.06(2)(d)(4)(b). Conversely, NE-GIS certificates include almost 50 fuel source categories. NE-GIS Rules at App. 2.4. CSG, DEP, MECo, and WMECo state that the Department needs to provide guidance to suppliers regarding how the fuel source categories identified on NE-GIS certificates should be matched to the categories listed on the disclosure labels, in order to ensure consistency and uniformity among suppliers'

labels (CSG Comments at 4; DEP Comments at 3-4; MECo Comments at 1-2; WMECo Comments at 2).

As stated in Section II, above, the primary benefit of using NE-GIS data as the sole basis for suppliers' information disclosure labels is that it ensures that all suppliers will develop their labels in a uniform manner. Thus, it is essential that all suppliers "map" the NE-GIS fuel source categories to the disclosure label categories in a consistent manner. There is not sufficient information in this proceeding to allow the Department to determine the appropriate manner in which this mapping should occur. The Department will work with work with interested persons to resolve this issue (see Section VI, below) .

B. Banking of Certificates

NSTAR states that the Department should provide suppliers the flexibility to purchase NE-GIS certificates in one quarter, but not include the certificates' attributes on their disclosure labels until a future quarter (i.e., suppliers should be allowed to "bank" certificates), similar to the banking provision included in DOER's RPS regulations (NSTAR Comments at 3 ). CSG opposes the banking of certificates for the purpose of complying with the Department's information disclosure requirements, stating that suppliers' labels should be based on the data that appears on their quarterly NE-GIS report, since that data provides an accurate portrayal of the environmental implications of each supplier's resource portfolio (CSG Comments at 2).

In establishing the rules for how suppliers should use NE-GIS data for complying with our information disclosure requirements, the Department generally seeks consistency with the

manner in which such data is to be used for compliance with DOER's RPS regulations, in order to increase the efficiency by which suppliers may comply with both regulatory requirements. The issue of banking certificates, however, is an area where the differing nature of the disclosure labels and RPS calls for different treatment. RPS places a requirement on suppliers regarding the purchase of a minimum number of certificates; an allowance for banking provides suppliers with an opportunity to minimize the costs associated with compliance. The disclosure labels are intended to present accurate information to customers regarding the characteristics of suppliers' resource portfolios over the applicable twelve-month period. Allowing banking of certificates would diminish this accuracy and would also complicate the Department's review process. Therefore, the Department rejects NSTAR's proposal on this issue.

C. Intermittent Renewable Resource Products

As stated above, 220 C.M.R. § 11.06(2)(d) requires that competitive suppliers update their information disclosure labels quarterly, using the most recent twelve months for which data is available. In instances where a supplier has operated for less than a full year, but more than three months, the regulations state that the supplier should rely on the historic information that is available to the supplier. Id.

Mass Energy states that, because of the seasonal generation capabilities of renewable resources,<sup>12</sup> the Department should provide suppliers offering "green" products more

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<sup>12</sup> The term "seasonal generation capability" refers to the fact that the ability of many renewable resources to generate electricity varies significantly from season to season.

flexibility with regard to complying with the information disclosure requirements during their initial twelve months of operation (Mass Energy Comments at 3). Mass Energy suggests that, until a supplier of renewable energy products has accumulated twelve months of NE-GIS data, the Department should allow the supplier to use prospective, rather than historic, data on its labels (id.). Mass Energy states that, if a supplier offering a renewable product is required to use less than twelve-months of NE-GIS data on its disclosure labels, the labels may appear to be inconsistent with the supplier's marketing claims, which typically commit the supplier to procure a level of resources over a one-year period (id. at 3-4). Mass Energy states that allowing green competitive suppliers to use prospective data for their initial labels would reduce consumer confusion about a green product and facilitate the sale of environmentally preferable electricity products (id. at 4). Mass Energy proposes that the Department define "green" products as those which (1) include greater than 50 percent renewable energy content, and (2) are certified by a Department-approved third-party entity.

CSG states that it recognizes the validity of allowing a supplier that offers "premium attribute-differentiated products" the opportunity to include prospective information on its information disclosure label until the supplier has twelve months of NE-GIS data available (CSG Comments at 5). However, CSG cautions that the use of prospective data on labels poses the risk that a supplier of such premium products may not deliver the actual product to the consumer, and argues that just one such incident could "set back public acceptance of renewable energy by many years" (id.). CSG urges the Department to allow the use of prospective data "only after careful deliberation and with strict limitations." CSG's submitted



a draft set of protocols the Department could use to govern the use of prospective data on labels (id., Att. A).

\_\_\_\_\_As the Department stated in Section II, above, the purpose of our information disclosure labels is to ensure that customers are presented with consistent information by which to evaluate the products being offered by competitive suppliers. To achieve this purpose, the labels must accurately report the non-price attributes of the products being provided by suppliers. For a supplier that is offering a product comprised of “seasonal” renewable resources, a full twelve months of NE-GIS data are required before the actual attributes of the product being provided can be accurately determined. Requiring such a supplier to issue labels that include less than twelve months of NE-GIS data would not provide accurate information to customers regarding the supplier’s product, and thus, would not be consistent with the stated purpose of the labels. Therefore, the Department considers it appropriate to grant such suppliers an exception to our regulations in order to allow them to include prospective information on their labels during their initial twelve months of operation.

It is essential, however, that the allowance of labels based on prospective information not compromise the accuracy of the disclosure labels.<sup>13</sup> Therefore, the Department intends to develop appropriate guidelines to determine (1) what types of renewable products merit such treatment, and (2) how suppliers should communicate to their customers the prospective nature of the information provided on the labels. There is not sufficient information in this

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<sup>13</sup> “Dissemination of inaccurate information, or failure to comply with the Department’s regulations on information disclosure may result in suspension, revocation, or non-renewal of a competitive supplier’s license... .” 220 C.M.R. § 21.06(7).

proceeding to allow the Department to develop such guidelines. Therefore, the Department intends to work with interested persons in the development of these guidelines (see Section VI, below).

\_\_\_\_\_D. Changes to NE-GIS Rules

As stated above, it is essential that the information produced by NE-GIS be accurate to the greatest extent possible. Commenters raised two areas in which the NE-GIS Rules need revision in order to improve the quality and accuracy of its data. First, Transcanada cites the inability of certain generators (generators with capacity greater than five MW that are not included in the ISO-NE market settlement system) to participate in NE-GIS (Transcanada Comments at 2). NE-GIS Rule 2.1 identifies the types of generators that may participate in NE-GIS (i.e., the generators for which NE-GIS will create certificates). The rule does not mention generators with capacity greater than five MW that are not included in the ISO-NE market settlement system. To maximize the quality of the data produced by NE-GIS, all generators should have a reasonable opportunity to participate. There is not sufficient information in this proceeding to allow the Department to determine whether the types of generators identified by Transcanada have such an opportunity. Therefore, the Department will work with interested persons to determine whether revisions to NE-GIS Rule 2.1 are appropriate to address this issue (see Section VI, below).<sup>14</sup>

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<sup>14</sup> The Department does not intend to revisit issues that were fully considered by the NEPOOL group that developed the NE-GIS Rules (as stated above, the Department participated, and will continue to participate, in this group). An example of such an issue is the manner in which NE-GIS treats energy imported into New England, which  
(continued...)

Second, WMECo states that the manner in which NE-GIS determines each generator's labor characteristics (and lists those characteristics on the generator's certificates) results in inaccurate labor information being included on suppliers' quarterly NE-GIS reports (WMECo Comments at 4). The manner in which NE-GIS certificates list generators' labor characteristics is established in Appendix 2.4, Part 4 of the NE-GIS Rules. There is not sufficient information in this proceeding to allow the Department to determine how this section of the NE-GIS Rules could be revised to improve the accuracy of the labor data listed on the certificates. Therefore, the Department will work with interested persons/entities to develop appropriate revisions to NE-GIS Rules, Appendix 2.4, Part 4.

#### VI. WORKING GROUP

In Sections IV and V, above, the Department identified several issues for which sufficient information does not exist in this proceeding to allow final resolution. These issues are: (1) the protocols by which distribution companies will provide information to the Department to verify the accuracy of the Massachusetts' sales that are included on suppliers' NE-GIS sub-accounts (see Section IV.C, above); (2) the manner in which the EBTs can be used to provide information that could be used by the Department to verify the accuracy of the product-specific sales that are included on suppliers' NE-GIS sub-accounts (see Section IV.C, above); (3) the mapping of the fuel source categories included on NE-GIS certificates to the fuel source categories listed on the information disclosure labels (see Section V.A, above);

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<sup>14</sup>(...continued)

is governed by NE-GIS Rule 2.7.

(4) the development of guidelines to govern how suppliers of renewable resource products may use prospective information on their disclosure labels during their initial twelve months of operation (see Section V.C, above); and (5) revisions to the NE-GIS rules that would increase the accuracy of the data included on the disclosure labels (see Section V.D above).

To allow the Department to resolve these issues in a way that will maximize the usefulness of the disclosure labels to consumers, the Department seeks further input from the distribution companies, competitive suppliers, Massachusetts governmental agencies, and other interested persons. As such, the Department will convene a working group to develop a list of recommendations for the issues listed above. The first meeting of the working group will be held on Thursday, April 1, 2004 at 10:00 a.m. at the Department's offices. The working group should submit to the Department its recommendations on the mapping of NE-GIS fuel source categories by May 1, 2004, to ensure that this issue is resolved before the July 2004 labels are issued. The working group should submit to the Department its recommendations on the remaining issues no later than June 1, 2004.

VII. ORDER

Accordingly, after due notice, it is

ORDERED: That each competitive supplier and electric distribution company shall comply with the directives concerning the implementation of the New England Generation Information System contained in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner